

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-4387

Appeal MA20-00399

City of Toronto

May 31, 2023

**Summary:** The City of Toronto (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all by-law complaints about the appellant's property. The city denied access to the responsive emails and photographs on the basis of the mandatory personal privacy exemption in section 14(1) of the *Act*.

In this order, the adjudicator upholds the city's decision that the records are exempt by reason of the mandatory personal privacy exemption in section 14(1). She finds that the records contain only the personal information of the complainant and that they were compiled and are identifiable as part of an investigation into a possible violation of law.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of personal information), 14(1), and 14(3)(b).

### OVERVIEW:

[1] This order concerns whether complaints about the appellant's property contain personal information and also whether they are exempt by reason of the personal privacy exemption.

[2] The City of Toronto (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for the following:

The contents of all by-law complaints against [the appellant's address], including text, pictures, audio etc. any by-law complaints ... from July 1, 2020 to September 3, 2020.

[3] The city issued an access decision granting partial access to the responsive records. Access was denied to the remaining parts of the records under the mandatory section 14(1) personal privacy exemption of the *Act*.

[4] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] During the course of mediation, the appellant advised the mediator that he was seeking access to all the withheld information relating to his property.

[6] The mediator conveyed the appellant's concerns to the city. The city indicated that it was maintaining its decision pursuant to section 14(1) of the *Act* as the information contained the personal information of the complainant.

[7] The appellant indicated that he did not want the complainant contacted to obtain consent as he believed he should have access to the information.

[8] Since no further mediation was possible, the file proceeded to adjudication, where an adjudicator may conduct an inquiry, I decided to conduct an inquiry and I sought the city's and the appellant's representations, which were exchanged between them in accordance with the IPC's *Practice Direction 7*.

[9] As the records may have contained the appellant's personal information, I added the discretionary personal privacy exemption in section 38(b) as an issue in this appeal. However, as noted below, I determine that the records only contain the personal information of the complainant, not the appellant.

[10] In this order, I uphold the city's decision that the records are exempt by reason of the mandatory personal privacy exemption in section 14(1). I find that the records contain only the personal information of the complainant and that they were compiled and are identifiable as part of an investigation into a possible violation of law.

## **RECORDS:**

[11] The records are email chains with photographs between the complainant and the city regarding a complaint about the appellant's property.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

## **DISCUSSION:**

### **Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[12] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates.

[13] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[14] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>1</sup>

[15] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.<sup>2</sup>

[16] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.<sup>3</sup>

[17] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>4</sup>

[18] Section 2(1) of the *Act* gives a list of examples of personal information:

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

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<sup>1</sup> See the definition of “record” in section 2(1).

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[19] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."<sup>5</sup>

[20] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.<sup>6</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>7</sup>

### ***Representations***

[21] The city submits that this information meets the requirements of paragraphs (d), (f) and (h) of the definition of "personal information" in section 2(1) of *MFIPPA*.

[22] It states that the records at issue are duplicated copies of email correspondence, some with photographs, which were supplied for the purpose of contextualizing the concerns raised by the complainant. It submits that this is the personal information of an identifiable individual other than the appellant.

[23] The city submits that the records do not contain any personal information about the appellant, but rather discusses issues related to how his property affects others.

[24] The appellant submits that the records contain his personal information and not that of the complainant. The appellant states that the only possible personal information of the complainant in the records is their email metadata. He states that

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<sup>5</sup> Order 11.

<sup>6</sup> Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

<sup>7</sup> See sections 14(1) and 38(b).

records that are exclusively personal information about the complainant should not be in a complaint file against his property.

[25] He further states that complaints about his garden are complaints about his personal expression and constitutes his personal information under paragraphs (e) and (g) of the definition of personal information in section 2(1) of *MFIPPA*.

### ***Findings***

[26] The appellant sought records about complaints concerning his property. The records are emails, some with attached photos, about the appellant's property, specifically his garden, not the appellant himself.

[27] The appellant has been advised of the details of the complaint by the city as contained in the record. The city specifically advised the appellant that:

A recent complaint was received against your property for both Long Grass and Weeds as well as alleged debris in the rear yard including organic waste.

[28] However, the appellant was not provided with the city's emails to and from the complainant by reason of the city's determination that they contain the personal information of the complainant.

[29] Based on my review of the records, I find that they contain only the personal information of the complainant, not the appellant. I do not agree with the appellant that the records contains views or opinions about him as provided for in paragraph (g) of the definition of personal information, set out above. Nor do the records contain the appellant's own views or opinions within the meaning of with paragraph (e) of the definition of personal information.

[30] Unlike the orders cited by the appellant (Orders MO-2955 and MO-4236), the records do not contain the personal information of the appellant and do contain the personal information of the complainant. The records are solely about whether the condition of the appellant's garden meets the requirements of the property standards by-laws.

[31] However, the records contain the personal information of the complainant as they contain:

- the complainant's views and opinions about the property (paragraph (e) of the definition of personal information);
- the complainant's address and name that appears with other personal information about them (paragraphs (d) and (h) of the definition of personal information).
- correspondence (emails) of the complainant to the city and responses thereto of a private or confidential nature (paragraph (f) of the definition of personal information).

[32] As the records contain the personal information of the complainant and do not contain the personal information of the appellant, I will consider whether the mandatory personal privacy exemption in section 14(1) applies to them.

**Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?**

[33] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[34] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[35] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. These five exceptions do not apply in this appeal.

[36] The section 14(1)(f) exception is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[37] Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[38] Sections 14(3)(a) to (h) should generally be considered first.<sup>8</sup> These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[39] If one of these presumptions applies, the personal information cannot be disclosed unless:

- there is a reason under section 14(4) that disclosure of the information would not be an "unjustified invasion of personal privacy," or
- there is a "compelling public interest" under section 16 that means the information should nonetheless be disclosed (the "public interest override").<sup>9</sup>

[40] If the personal information being requested does not fit within any presumptions under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered. None of the situations in section

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<sup>8</sup> If any of the section 14(3) presumptions are found to apply, they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established.

<sup>9</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

14(4) are relevant to the present appeal and the appellant has not raised the possible application of the public interest override in this appeal.

***Section 14(3)(b)***

[41] The city relies on section 14(3)(b) regarding investigation into a possible violation of law. This section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[42] The city relies on Orders M-181 and M-382 where it was found that personal information relating to investigations of alleged violations of municipal by-laws falls within the scope of the presumption provided in section 14(3)(b).

[43] It also relies on Order MO-1845, where the adjudicator upheld Peterborough's decision to deny access to information that was compiled and identifiable as part of an investigation into a property standards by-law complaint and possible contravention of the Building Code.

[44] The city submits that in the current appeal the personal information at issue are emails sent to the city concerning the appellant's property which was compiled by the city as part of its investigation into violations of various municipal by-laws (Toronto Municipal Code) such as, Chapter 629 on property standards.

[45] The appellant admits that the city conducted an investigation into alleged violations of the city's property standards by-laws concerning his property in response to the complainant's complaint.

***Findings re section 14(3)(b)***

[46] The presumption in section 14(3)(b) requires only that there be an investigation into a possible violation of law.<sup>10</sup> So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.<sup>11</sup> The presumption can apply to different types of investigations, including those relating to by-law enforcement.<sup>12</sup>

[47] The records at issue relate to complaints made about the appellant's property. These complaints were investigated by the city for infractions of the city's property standards by-laws.

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<sup>10</sup> Orders P-242 and MO-2235.

<sup>11</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

<sup>12</sup> Order MO-2147.

[48] Based on my review of the records, I agree with the city that the personal information the records, which is only the personal information of the complainant, was compiled and is identifiable as part of the city's investigation into possible violations of law under the city's property standards by-laws.

[49] I considered whether the personal information of the complainant could be severed from the records so that portions of the records could be disclosed to the appellant. However, in my view, the personal information of the complainant is so inextricably intertwined with the remaining information in the records it cannot be severed from the records. Therefore, the presumption against disclosure in section 14(3)(b) applies to the entirety of the records.

[50] As the presumption in section 14(3)(b) applies, disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy within the meaning of section 14(1)(f) and the information is therefore exempt from disclosure.

[51] In summary, the records are exempt from disclosure under section 14(1) and I will dismiss the appeal.

**ORDER:**

I uphold the city's decision and dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ May 31, 2023